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Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
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Proposals and contributions received from Governments

Switzerland: proposals and comments on the preparation of a draft United Nations Convention against Corruption

1. The Swiss authorities wish to point out that a number of the elements discussed below were already raised in a statement at the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption, held in Vienna from 30 July to 3 August 2001. Since then, those points have been expanded in the light of the discussions held by the Expert Group and the progress of work in other forums.

2. The following comments are based on the list of indicative elements contained in paragraph 3 of the report of the Meeting of the Intergovernmental Open-Ended Expert Group (A/AC.260/2 and Corr.1).

1. General remarks

3. The drafting of such an instrument by the United Nations will make the fight against corruption a global, rather than a regional, issue. The United Nations should take advantage of the instrument's universal character by adopting an approach that is as multidisciplinary as possible. The challenge of the forthcoming negotiations will be to develop high-level common practices and standards capable of effectively fighting corruption while respecting the diversity of the cultures and legal systems of Member States.

4. At the drafting level, the text of the convention, in particular its preamble, should make explicit reference to general ethical principles, which are the source of the fight against corruption. Such principles include, inter alia, the general objective of good governance, the principles of fairness and equality before the law, the need for transparency in the management of public affairs and the need to safeguard

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integrity. Moreover, it is important to mention the harmful effects of corruption on development and the distortions it creates in economies.

2. Definitions

5. It is essential that the secretariat responsible for the *travaux préparatoires* take into consideration the work of other international organizations, such as the Organisation for Economic Cooperation and Development (OECD), the Organization of American States (OAS) and the Council of Europe. This should be done both in the area of definitions and terminology as well as standards. With regard to general penal provisions and also questions of jurisdiction, liability of enterprises, money-laundering, confiscation or mutual legal assistance, Switzerland wishes to stress the need to draw on the standards consolidated at the multilateral level, in particular those contained in the United Nations Convention against Transnational Organized Crime.

3. Scope

6. With respect to the scope of the future convention, Switzerland considers that the *travaux préparatoires* should take due consideration of the international objectives and standards already in force in other organizations (OAS, OECD and the Council of Europe, for example) and should avoid duplication. Switzerland applies high standards in that area and expects that, as far as possible, the objective of the new United Nations instrument should be to have standards that are at least as high but in any case not lower.

7. The scope of application should reflect a balanced vision of the fight against corruption. Switzerland expects that, in principle, all forms of corruption that constitute a burden to good governance and the political and economic stability of countries, the competitiveness of enterprises, market transparency and the integrity of judicial systems should be dealt with in the convention. In that regard, the scope of application should cover both recognized corruption or corruption among elite groups and petty corruption.

4. Criminalization

8. The future convention should deal with the active and passive corruption of national and foreign public officials and provide for the liability of natural and legal persons.

9. Switzerland strongly believes that the future instrument should reflect the general principles of law and other fundamental rules of democratic legal systems, in particular the presumption of innocence (no reversal of the burden of proof).

5. Preventive measures

10. The establishment of preventive measures should be a key element of the convention. The provisions of the convention and its preamble should deal with the

sources of endemic corruption and make appropriate reference to and, if possible, stress the compulsory nature of all measures to be taken in the area of prevention. Such measures should include:

(a) Establishment of measures and standards that guarantee good governance and the sound and transparent management of public affairs;

(b) Recognition of the social and economic aspects of the problem, in particular the need for the equitable remuneration of civil servants;

(c) The guarantee of freedom of the press;

(d) Development of long-term national strategies to fight corruption and safeguard integrity;

(e) The need for independent judicial systems and oversight bodies.

6. Confiscation and seizure/preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds

11. Switzerland considers that the provisions of the future convention relating to the freezing, confiscation and return of funds derived from acts of corruption should complement the preventive measures and should:

(a) Encourage States parties to the convention to adopt national legislation that permits the seizure and confiscation of funds of illicit origin derived from acts of corruption, including the return of such funds to the States of origin or to other injured parties;

(b) Formally recognize national and international corruption as a predicate offence in relation to money-laundering;

(c) Encourage States parties to the convention to establish, when necessary, the requisite legal bases for the provision of mutual legal assistance necessary for international cooperation in the aforementioned areas. The necessary procedures for that purpose should be in keeping with the principles of reciprocity and dual criminal liability.

7. Liability of legal persons

12. Since offences involving corruption are often committed in and for private enterprises, Switzerland believes that the future universal United Nations instrument should provide explicitly for the criminal liability of legal persons.

8. Promoting and strengthening international cooperation

13. As indicated above, Switzerland considers that the *travaux préparatoires* for a global convention against corruption should be based on the results of the High-level Political Signing Conference for the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, held in Palermo, Italy,

from 12 to 15 December 2000, and take account of and continue the efforts that have been undertaken in the field of international cooperation. Special emphasis should be placed on mutual legal assistance. Switzerland believes that it is important that the convention should intensify multilateral efforts in the field of international cooperation, for example in the area of money-laundering and the necessary connection with the illicit funds of politically exposed persons.

9. Technical assistance

14. The question of technical assistance should concentrate primarily on preventive measures (see also section 4 above). It should consist of assistance in implementing the objectives of the convention. However, it must be stressed that foreign assistance should be secondary and subsidiary to national efforts. Technical assistance, like any other financial assistance, should concentrate on improving local, regional and national judicial systems and national bodies to monitor money-laundering and on establishing independent national entities to safeguard integrity in public management.

15. It should also be pointed out that the principal beneficiaries of reforms, in both the ethical and economic spheres, are, first of all, the local and national authorities of the countries that implement them. Indeed, effective measures to combat corruption benefit primarily the community that applies them. Consequently, the convention should make explicit reference to the primacy of the national self-financing of such measures.

10. Mechanisms for monitoring implementation

16. It is essential that future recommendations and other obligations arising from the adoption of the convention be implemented effectively. In order to ensure follow-up by States parties to the convention, the convention should provide for a mechanism to monitor implementation. Such a mechanism should meet the usual standards of transparency, be kept within reasonable financial limits and create synergies with other recognized monitoring systems, such as those of the Group of States against Corruption (GRECO) of the Council of Europe and OECD. Close and regular cooperation with recognized international non-governmental organizations active in the field of monitoring is also to be recommended.